

IN RE: PETITION FOR ZONING VARIANCE
E/S Fieldgreen Road, 420' NE
of the c/l of Fieldchat Road
(4404 Fieldgreen Road)
11th Election District
5th Councilmanic District
William S. Gahs, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-91-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request variances to permit an existing open projection (deck) with a rear yard setback of 6 feet in lieu of the required 15 feet, and to amend the Fourth Amended Final Development Plan of Brookhurst, Block B, Lot 24, to allow said deck to be constructed outside the building envelope, as more particularly described in Petitioner's Exhibit 1.

The Petitioners appeared and testified. Appearing as Protestants in the matter were: Joseph DiPietro and Donald Lounsbury.

Testimony indicated that the subject property, known as 4404 Fieldgreen Road, consists of a single family dwelling. Petitioners recently constructed a deck on the rear portion of the dwelling without benefit of a building permit. The deck has been constructed within the rear yard setback requirements. Upon receipt of a complaint from an adjoining property owner, a stop work order was issued by the Department of Permits and Licenses pending application for the appropriate building permits. Petitioners testified to deny the relief requested would result in undue hardship or practical difficulty upon them as the deck has since been completed. Petitioners submitted photographs of other homes in the development depicting the close proximity of the homes in general and the fact that other decks of similar size exist in the community.

The Protestants reside on Fieldchat Road and the rear of their properties abut Petitioners' property at the rear. The Protestants are generally opposed to the requested variance in view of the fact that the deck is approximately 6 feet from the rear property line. Further, the Protestants noted the fact that Petitioners continued construction of the deck after the issuance of the stop work order. The Protestants believe that to grant the variance requested will lower the value of their homes as well as allow an illegal structure to remain. Testimony and photographs presented evidenced the general overdevelopment of the subject property and the close proximity of the deck to the rear property line.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. The testimony presented by Petitioners

was in support of a matter of preference rather than of the necessity for the variance. Further, the fact that the deck was completed after the issuance of a stop work order indicates the Petitioners' unwillingness to comply with building code and zoning regulations. A site visit by the Zoning Commissioner revealed that the subject property is overdeveloped, that the deck in question overcrowds the property causing a disproportionate intrusion on neighboring properties, and is in direct violation of the density concepts set forth in the D.R. zoning regulations. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of September, 1989 that the Petition for Zoning Variance to permit an existing open projection (deck) with a rear yard setback of 6 feet in lieu of the required 15 feet, and to amend the Fourth Amended Final Development Plan of Brookhurst, Block B, Lot 24, to allow said deck to be constructed outside the building envelope, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that Petitioners remove the deck by no later than January 1, 1990.

JRH:bjs

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

MICROFILMED

PETITION FOR ZONING VARIANCE TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1202.3.B., 301.1, 504 (V.B.B. CODE) To permit an open

Projection (deck) with a rear yard setback of 6 ft. in lieu of the required 15 ft. & to amend the 4th Amended Final Development Plan of Brookhurst, Block B, Lot 24 to allow said deck construction outside of the building envelope.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

- 1) Strict compliance with requirement would unreasonably prevent the use of proposed deck.
- 2) Granting this variance would do no injustice to other property owners in district and give substantial relief to Owner.
- 3) Public safety and welfare would be secure.
- 4) Said plat outline is peculiar with other properties in neighborhood.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Legal Owner(s):

William S. Gahs

(Type or Print Name)

Signature

Address

City and State

Signature

Name, address and phone number of legal owner, co-representative to be contacted

4404 Fieldgreen Road 529-2835

Baltimore, MD 21236

City and State

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 087645

Received of BA the sum of 35.00 Dollars for FILE

DATE 9/15/89

BY FILE CODE 01 JRM:551

Signature of Robert Haines
Zoning Commissioner of Baltimore County

September 8, 1989

Mr. J. Robert Haines
Zoning Commissioner of Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case #90-91-A

Dear Mr. Haines,

This letter is in reference to the above petition to permit an open projection (deck) with a rear yard setback of 6 ft. in lieu of the required 15 ft. for Brookhurst, Block B, Lot 24, (4404 Fieldgreen Road)

We the residents of 9034 Fieldchat Road whose property abuts those of 4404 Fieldgreen Road request that this variance be denied due to the following reasons.

1. No other variance has been requested or approved regarding the setback requirement in this development.
2. The home at 4404 Fieldgreen Road without the deck is closer to the setback than any other home in the development.
3. The footers at the farthest points from the house are only 2 inch cement slabs and were not done the same as the other footers which were dug to meet code.
4. Three stop work orders were issued as far as we know and work was continued until the deck was completed.

We also feel that because this deck is so close to the setback and it is the only one that is, it could decrease the value of not only our property but also the property at 9034 Fieldchat Road which is also affected by this problem.

We request that the variance should be denied and the deck at 4404 Fieldgreen Road be brought within code.

Sincerely,

Donald A. Lounsbury
Donald A. Lounsbury

Kathleen A. Lounsbury
Kathleen A. Lounsbury

9034 Fieldchat Rd.
Baltimore, Maryland 21236

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Zoning Description

BEGINNING AT A POINT ON THE EAST SIDE OF FIELDGREEN RD.
50' WIDE AT A DISTANCE OF 120' FT. ALONG THE N.W.
CORNER EAST RIGHT OF WAY LINE FROM THE CENTER LINE
OF FIELDCHAT RD. 50' FT. WIDE TO THE BEGINNING
OF LOT 24 IN THE SUBDIVISION OF BROOKHURST
PLAT BOOK 54, FOLIO 147 IN THE 11TH E.D.

OWNERS WILL TAKE FULL RESPONSIBILITY
AS TO THE INFORMATION PROVIDED ON
SAID PLAT PREPARED BY BALTO. CO.

William S. Gahs
OWNER DATE 9/15/89

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PROTESTANT(S) EXHIBIT 1



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PETITIONER(S) EXHIBIT (3)



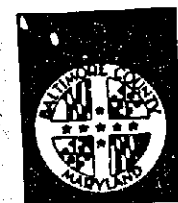
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Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

July 24, 1989

RECEIVED
AUG 3 1989



Dennis F. Rasmussen
County Executive

ZONING OFFICE

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 525, 526, 527, 542, 543, 544, 545, 546, 547, 548, 549, 550, 552, 553, 554, 555, 557, 558 and 559.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

MSF/lab

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BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
FROM: Paul Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: William and Gail Gahs, Item 551
Zoning Petition No. 90-91-A

DATE: August 16, 1989

The petitioners request a variance to permit a deck with a rear yard setback of 6 feet in lieu of the required 15 feet, and to amend the 4th Amended Development Plan.

The Office of Planning and Zoning has no comment on the above request.

PK/JL/sf

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AUG 17 1989

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2586
(301) 887-4500

Paul H. Reincke
Chief

JUNE 26, 1989

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204



Dennis F. Rasmussen
County Executive

RE: Property Owner: WILLIAM S. GAHS
Location: E SIDE FIELD GREEN ROAD, 420' NE OF
CENTERLINE OF FIELDCHAT ROAD
Item No.: 551 Zoning Agenda: JUNE 27, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Capt. Kelly 6-28-89*
Planning Group
Special Inspection Division

Noted and
Approved: *Capt. Tom Brady*
Fire Prevention Bureau

JK/KEK

MICROFILMED

JUN 27 1989